



PPG Industries, 230626

PPG Industries Inc.
440 College Park Drive
Monroeville, PA 15146
Telephone: 724.325.5982
Fax Number: 724.325.5051

Michael H. McGarry
Sr. Vice President, Commodity Chemicals

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Daniel R. Elliott III, Chairman
Ann D. Begeman, Vice Chairman
Francis P Mulvey, Commissioner
Surface Transportation Board
395 E Street, N.W.
Washington, DC 20423-0001

Re: STB Ex Parte 705 - Competition in the Railroad Industry; Supplemental filing by PPG Industries, Inc.

Dear Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey:

I am pleased to respectfully submit this follow up information in the above referenced proceeding in response to the request of Commissioner Mulvey at the public hearing on June 23, 2011. At the hearing, I presented PPG's oral testimony, including that with respect to large rate cases "the litigation costs and tariff premiums that must be paid by the shipper can be upwards of \$20 million, which prevents many companies from ever filing a rate case." Commissioner Mulvey expressed his surprise at the \$20 million figure and asked me to follow up with the Board to provide a further explanation of these costs.

PPG began to consider whether to file a rate case when contract rates proposed by a Class I rail carrier would have resulted in rate increases that PPG viewed as unreasonably high. PPG began its analysis by considering first the small (Three Benchmark) rate case procedures and then the medium (Simplified Stand Alone Cost "SAC") procedures. However, PPG soon discovered that the rate relief that it could obtain from the Board under such procedures was extremely limited due to the existing rate relief caps, and this circumstance did not justify the filing of such cases. In other words, the potential "overcharges" that PPG was paying in high rail rates far exceeded the rate relief caps. This left PPG to consider filing a large SAC rate case with the STB. In investigating a large rate case, PPG was informed that:

- In order to evaluate whether its rate case was viable, it would be required to pay consultant and attorney fees estimated to **exceed \$100,000.**
- The legal and consultant fees involved to litigate the large SAC case would be approximately **\$5 million**, based on the number of involved origins and destinations and length of the litigation.
- During the pendency of the case, PPG would be required to pay the railroad's tariff rates which were many times higher than the unreasonable contract rates already rejected by PPG. Payment of the tariff rates across all of PPG's traffic handled by the railroad under the proposed contract would have required PPG to incur approximately an additional **\$20 million annually** in freight costs *layered on top of the incredibly high contract rates.*

This "tariff premium" was calculated by reviewing each origin and destination and multiplying the expected volume times the tariff rate less the current contract rate. Since many of the tariff rates that PPG examined for this recent evaluation had R/VC values ranging from 786% to 1167% and were well over 100% higher than the contract rates, the premium added up quickly and would have a significant impact on our business.

Thus, by filing a large rate case the Class I railroad is able to penalize the shipper by forcing the shipper to pay a very substantial tariff premium. Moreover, because the railroad can increase its tariff rates unilaterally at any time, the shipper faces an additional risk that its costs could be even higher than initially estimated. PPG viewed payment of this "tariff premium" as a major disincentive to filing the case.

Although a shipper *may* get only the tariff payments awarded back in reparations *if* it wins the case, no large rate case is a sure bet, and the substantial uncertainty and lengthy delays associated with SAC cases could result in higher costs. Thus, the enormous expense and risks that a shipper must endure in the outlay of real capital is a major impediment to initiating a large rate case at the Board.

Finally, another significant issue that was raised at the hearing is the railroads' practice of "bundling" rates, so that a shipper is forced to either include all traffic and lanes in a contract or move all of the same under tariff rates and terms. This negotiating tactic allows the railroads to maximize the potential tariff premium to be paid by the shipper, in the hopes of discouraging the filing of rate cases. It is an effective tool that works only in the railroads' favor by preventing many aggrieved companies from accessing the Board. PPG has experienced this first hand. However, because the STB cannot require a railroad to enter into a contract, there is little a shipper can do.

For the reasons stated in PPG's written comments and oral testimony, the company respectfully requests the Board to open a proceeding to change its competition policies in order to facilitate greater competition between railroads, including expanded reciprocal switching and a reversal of the Board's bottleneck rule. This would allow shippers to obtain rates based on the workings of competition, and would avoid lengthy and costly litigation which could result in government-established rail rates. PPG also supports a cap on R/VC ratios for TIH products, as well as changes to the Board's rate case procedures that would reduce the complexity, timing and costs associated with such cases.

Respectfully submitted,



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Michael H. McGarry
Senior Vice President, Commodity Chemicals
PPG Industries, Inc.